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October 7, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results and Final Partial Rescission of Oil Country Tubular Goods from Mexico

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Summary

We have analyzed the comments and rebuttals thereof from interested parties in the administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Mexico. *See* Antidumping Duty Order: Oil Country Tubular Goods From Mexico, 60 FR 41056 (August 11, 1995) (AD Order). We recommend that you approve the positions developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

Comment 1: Entry Date
Comment 2: Constructed Value Profit
Comment 3: Limited-Service and Regular-Grade OCTG
Comment 4: Offsetting for Export Sales that Exceed Normal Value

Background

On May 10, 2005 we published the preliminary results of this antidumping duty administrative review. *See* Certain Oil Country Tubular Goods from Mexico; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission, 70 FR 24517 (May 10, 2005) (Preliminary Results).

We invited parties to comment on our Preliminary Results. We received case briefs from respondent Hylsa, S.A. de C.V. (Hylsa) and petitioner United States Steel Corporation (petitioner) on June 9, 2005. We received rebuttal briefs from domestic interested parties

IPSCO Tubulars, Inc., Lone Star Steel Company and Maverick Tube Corporation (Domestic Interested Parties) on June 14, 2005. We received rebuttal briefs from Hylsa and petitioner on June 17, 2005. A public hearing was held on July 12, 2005. All interested parties attended the public hearing and made arguments.

Because the Department determined that it was not practicable to complete the final results of this review within the original time period, the Department extended the time limit for completion of the final results of this administrative review in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). *See* Oil Country Tubular Goods from Mexico: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review, 70 FR 48102 (August 16, 2005).

Discussion of the Issues

Comment 1 – Entry Date

Petitioner maintains that the Department should include all export price sales that entered the United States during the period of review (POR) in its calculation of Hylsa's dumping margin. Petitioner contends that only sales invoiced during the POR were included in the Department's preliminary calculation. Petitioner argues that the Department's antidumping duty questionnaire instructs respondents to report sales that were entered for consumption during the POR, except in an export price (EP) situation where entry date is not known, or in a constructed export price (CEP) situation where the date of sale is used to report sales. Because this is an EP situation, petitioner contends the Department should include all sales that entered during the POR in its antidumping analysis.

Petitioner also cites Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands, to argue that the Department's normal practice is to include all EP sales that were entered for consumption during the POR and all CEP sales that have a date of sale during the POR. *See* Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands, 69 FR 33630 (June 16, 2004) (Netherlands HR).

Petitioner points out that although respondent initially claimed it was unable to report the entry date for sales, it was eventually able to do so. As a result, petitioner argues, respondent was able to report additional sales that were invoiced prior to the POR but entered during the POR. Petitioner also notes that respondent reported additional sales that were invoiced during the POR but entered after the POR.

In its June 17, 2005, rebuttal submission, Hylsa argues that it does not object to the Department's use of sales invoiced during the POR for the Preliminary Results.

Department's Position: We agree with petitioner. In accordance with the Department's normal practice, for those sales that occurred prior to importation, we have used the date of entry to select those transactions used in our analysis. This methodology comports with the Department's standard administrative review questionnaire, which instructs respondents to report such sales of merchandise, which entered for consumption during the POR. This methodology is also consistent with that used in other antidumping duty administrative reviews. *See, e.g.*, Netherlands HR and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 63 FR 39071 (July 21, 1998). Furthermore, in this case respondent reported the entry date for all EP sales. Thus, for these final results, because all sales reported by respondent are EP sales, we have amended our margin calculation program so that the entry date is used to define the universe of sales used in our analysis.

Comment 2 - Constructed Value Profit

Hylsa argues that the Department should revise its constructed value (CV) profit ratio to be consistent with the elements included in its CV calculation. Hylsa provides three alternatives to eliminate the inconsistencies between the CV profit ratio and the CV calculation.

Hylsa points out that the Department used its tubular products division's cost of goods sold (COGS) as the denominator of the CV profit ratio and the tubular products division's net income as the numerator. Hylsa notes that the Department then applied the profit rate to Hylsa's cost of production (COP) plus selling and packing expenses. Hylsa argues that this caused an inconsistency between the elements used in the profit ratio calculation and the COP plus selling and packing expenses used in the CV calculation. Hylsa suggests that the Department apply the profit rate only to the cost of manufacture (COM) of each product.

Furthermore, Hylsa claims that the Department should recalculate the tubular products division's profit rate using the same expense rates for G&A and interest expense that were included in the CV calculation. Hylsa claims that its tubular products divisional income statement does not accurately reflect the total G&A or interest expense for that division's operations. Hylsa maintains that its accounting system accumulates costs by division, and prepares divisional trial balances and income statements, which are then combined to prepare the overall results for Hylsa. According to Hylsa, the amounts accumulated in the corporate headquarters division are not allocated out to the other producing divisions in Hylsa's normal accounting system. However, the Department's calculation of G&A included in the CV calculation was based on company-wide amounts, including that of the corporate headquarters division. Hylsa's interest expense included in the CV calculation was based on its parent's consolidated financial statements. Thus, Hylsa contends that the Department allocated a portion of the corporate headquarters division's G&A and interest expense to the subject merchandise. Hylsa argues that the CV profit rate calculation and the CV calculation are inconsistent because the CV profit rate calculation does not include the corporate headquarters division's expenses related to the tubular products division. Hylsa asserts that the Department, for the final results, should revise the CV profit rate calculation using the percentages for G&A and interest calculated by the Department instead of the amounts recorded for the tubular products division.

Finally, Hylsa suggests that if the Department does not recalculate the CV profit ratio on a consistent basis, then it should use the profit shown on Hylsa's audited financial statements to determine the CV profit rate for inclusion in the constructed value calculation. Hylsa states that by using its audited financial statements to determine the CV profit rate, the Department can calculate the CV profit rate without having to make any adjustment, as the company-wide financial statements accurately depict profit after taking the relevant G&A and interest expenses into account.

In its June 17, 2005, rebuttal submission, petitioner argues that the Department should continue to use Hylsa's tubular products division Income Statement to calculate profit. Petitioner contends that the plain language of section 773(e)(2)(B)(i) of the Act requires the Department to use actual amounts recorded in Hylsa's normal books and records for the tubular products division to calculate profit. Petitioner maintains that Hylsa's suggestion, of basing profit on company-wide G&A and interest, is a hybrid approach that is not allowed by the statute.

Petitioner argues that accounting for company-wide G&A and interest expenses in the profit calculation was an approach that was rejected by the Department in the 4th antidumping duty administrative review of OCTG from Mexico and should be rejected in the present case. *See* Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001) at Comment 6 of the Issues and Decision Memorandum. Petitioner contends that Hylsa has not distinguished the facts of the fourth administrative review from the present case and as such, the Department should not change its practice from the Preliminary Results. Additionally, petitioner maintains that Hylsa did not challenge the Department's determination on the calculation of profit to the North American Free Trade Agreement Binational Panel, and that Hylsa's attempt to argue the Department's calculation of profit in the present case should be rejected.

Petitioner maintains that the Department should reject Hylsa's argument to use a company-wide profit figure from its financial statements. Petitioner contends that the Department has previously used the profit figure of Hylsa's tubular products division in past reviews and should continue to do so in the present case.

Petitioner argues that a company-wide profit figure would include not only pipe and tube, but also hot and cold rolled steel, reinforcing bars, wire rod and specialty steel. Additionally, petitioner contends that Hylsa also develops proprietary technology for the reduction of iron ore, provides related consulting, and provides training services. Petitioner contends that basing profit on a company-wide figure would therefore include merchandise that is not of the same general category of products as subject merchandise as required by the statute.

In its June 14, 2005, rebuttal submission, Domestic Interested Parties agree with Hylsa that the CV profit ratio should be consistent with the CV calculation and suggest that the Department use only divisional income statements for all financial ratios (*i.e.*, G&A, interest, and CV profit). Domestic Interested Parties argue that for the Preliminary Results, the Department found that in accordance with section 773(e)(2)(B)(i) of the Act, it was appropriate to use Hylsa's tubular divisional financial statements for the calculation of CV profit. Therefore, Domestic Interested Parties propose that the Department derive all financial ratios from Hylsa's divisional financial statements.

Domestic Interested Parties maintain that Hylsa's proposed method of using company-wide financial statements for G&A and interest in the CV profit calculation does not result in a consistent calculation. Domestic Interested Parties argue that this methodology would use the tubular division income statement for the COM component of CV profit and company-wide financial statements for the G&A and interest components of CV profit and would therefore be inconsistent. Therefore, Domestic Interested Parties contend that all financial ratios should be derived from a single source.[1]

In its June 17, 2005, rebuttal submission, Hylsa argues that Domestic Interested Parties filed a rebuttal brief that did not rebut either Hylsa's or US Steel's case brief and should, therefore, be rejected.[2] Hylsa points out that Domestic Interested Parties are proposing a new methodology for the calculation of G&A and interest for inclusion in the CV calculation. Hylsa notes that the Department's regulations at 351.309(d)(1) state that a rebuttal brief may respond only to arguments raised in the case briefs. Hylsa maintains that Domestic Interested Parties rebuttal brief involved the Department's preliminary calculation of G&A and interest expense, which had not been addressed in either petitioner's or respondent's case brief, and should therefore be rejected. Hylsa argues that Domestic Interested Parties should have filed their argument as a case brief and allowed other parties to the proceeding a chance to rebut their argument.

Hylsa states that the Department already accepted for the Preliminary Results, its company-wide G&A calculation. Hylsa contends that the source of the G&A expense used in Hylsa's calculation is essentially the same (but for the adjustment from nominal to constant pesos) as the source the Domestic Interested Parties have proposed. Hylsa agrees with Domestic Interested Parties that they did not use company-wide financial statements or company-wide figures from its divisional consolidated worksheet for the calculation of interest expense. Hylsa states that it followed the Department's established practice of calculating its reported interest expense rate based on its ultimate parent's, Alfa's, consolidated financial statements.

Hylsa maintains that Domestic Interested Parties case brief proposes to include wages and salaries of Hylsa's bar and rod production subsidiaries, and amounts relating to a transfer of reserves from Hylsa's subsidiary TISA to Hylsa. Hylsa claims that these expenses are captured in Hylsa's G&A and other expenses, but excluded from Hylsa's

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[1] The Department notes that Hylsa argued in its June 17, 2005, Rebuttal Brief that Domestic Interested Parties CV profit comment in its June 14, 2005, Rebuttal Brief is a new argument, as opposed to a rebuttal argument, and should be rejected by the Department. The Department disagrees with Hylsa. Domestic Interested Parties CV profit comment is an alternative to Hylsa's proposed methodology for calculating CV profit and as such is appropriately included in its rebuttal brief.

[2] Hylsa was able to review Domestic Interested Parties rebuttal brief before filing its own rebuttal brief because Domestic Interested Parties did not avail themselves of the extension granted parties for filing rebuttal briefs. Therefore, Domestic Interested Parties rebuttal briefs were filed on June 17, 2005, while US Steel and Hylsa's rebuttal briefs were filed three days later on June 20, 2005.

G&A calculation. Hylsa maintains that Domestic Interested Parties failed to explain why the Department should include these expenses in its G&A calculation.

Hylsa argues that the Department has followed the same basic approach for calculating G&A and interest expense for multiple products in multiple investigations and reviews for Hylsa. Hylsa contends that the Department has followed the same basic approach in the present case and Domestic Interested Parties have provided no reason for the Department to depart from its practices.

Department's Position: We agree with Hylsa in part. Consistent with section 773(e)(2)(A) of the Act, the Department's preferred approach in determining the amount of profit to be included in CV is to calculate an actual profit on home market sales of the merchandise under consideration. This approach is not available in this case because Hylsa made no home market or third country sales of the merchandise under consideration during the period of review. Therefore, we have looked to the alternatives under section 773(e)(2)(B) of the Act to calculate CV profit. For the Preliminary Results, consistent with past reviews, we calculated CV profit based on section 773(e)(2)(B)(i) of the Act, that is an actual amount of profit for the same general category of products as the subject merchandise. Specifically, we calculated a profit amount based on Hylsa's tubular division's financial statements.

We agree with Hylsa that the tubular products division's profit rate should be re-calculated using the same expense rates for G&A and interest expense that were used by the Department in the CV calculation. In order to properly reflect the total G&A expenses related to the tubular division, the Department has multiplied the tubular products division's cost of goods sold by Hylsa's overall G&A rate, to determine the applicable amount of G&A related to the tubular products division for inclusion in the calculation of the CV profit rate. As for interest expense, the Department has multiplied the tubular products division's cost of sales by Hylsa's consolidated parent's interest expense rate to determine the applicable amount of interest expense related to the tubular products division for inclusion in the CV profit rate. The Department then calculated a revised tubular products division profit (*i.e.*, revenue less COGS, G&A, selling, other, and interest expenses) and divided by the tubular products division's total COGS, to determine the revised CV profit rate. Thus, for the final results, the Department calculated the tubular products division's CV profit rate using the same G&A and interest rates for COP and CV.

We also agree with Hylsa that a CV profit rate using the COGS as the denominator should be applied to COM. By applying such a CV profit rate to COM, the Department provides for consistent application of the CV profit rate as both COGS and COM are exclusive of selling, G&A and interest expense.

The Department disagrees with Domestic Interested Parties suggestion that we use Hylsa's divisional financial statements for the calculation of G&A and interest expense. It is the Department's well-established practice to calculate the G&A and interest expense rates on a company-wide basis and consolidated basis respectively, not on a divisional basis. The Department uses the audited financial statements of the producer for the G&A ratio and the financial statements of the highest consolidated party for the interest expense ratio.

Comment 3 – Limited-Service and Regular-Grade OCTG

Hylsa argues that the Department should recognize the sale of both regular-grade OCTG and limited-service OCTG in the home market in its dumping margin calculation by applying average U.S. prices to normal values.

Hylsa argues that in the process of manufacturing OCTG, it produces both regular-grade OCTG and limited-service OCTG. Hylsa contends that the production of limited-service OCTG was an unavoidable consequence of Hylsa's effort to produce regular-grade OCTG. Hylsa maintains that while regular-grade OCTG meets API 5CT product requirements, limited-service OCTG fails to meet API 5CT standards because it fails certain non-destructive tests or has superficial defects causing it to be reclassified and sold as limited-service OCTG. Accordingly, Hylsa contends that limited-service OCTG is sold at a lower price.

Hylsa maintains that it does not assign different costs to regular-grade and limited-service OCTG in the course of its production because it does not intend to produce different products when it manufactures the OCTG.

Hylsa argues that because it had no comparison market sales and the Department had to use constructed value, the price differences between regular-grade and limited-service OCTG are not accounted for in the Department's margin calculations. Therefore, Hylsa contends that the Department should compare average United States prices to constructed value to eliminate the price differences between the regular-grade and limited-service OCTG sold in the United States.

Hylsa maintains that sales of limited-service OCTG are analogous to "end-of-day" distress sales of perishable products, such as flowers. Hylsa argues that the Department recognizes that distress sales of perishable products are a necessary consequence of making non-distress sales earlier in the day. *See* Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers From Colombia, 62 FR 53287 (October 14, 1997) (Flowers from Colombia). Hylsa contends that the Department has recognized that the dumping analysis for non-distressed sales of perishable products must be based on a comprehensive approach that looks at the overall return on both distress and non-distress sales. Hylsa maintains that because sales of limited-service OCTG are a necessary consequence of producing and selling regular-grade OCTG, a comprehensive approach that looks at the overall return on both limit-service and regular-grade OCTG should be applied. Hylsa admits that while OCTG is not a perishable product, the Department should apply the same logic, namely that because sales of limited-service OCTG are a necessary consequence of producing and selling regular-grade OCTG, a comprehensive approach that looks at the overall return on both limited-service and regular-grade OCTG should be applied.

In its June 17, 2005, rebuttal submission, petitioner argues that there is no basis for the Department to modify its dumping margin calculation to account for sales of limited-service OCTG. Petitioner contends that both the Department and the courts have rejected Hylsa's arguments regarding limited-service OCTG previously.

Petitioner contends that in IPSCO, the Department rejected a similar claim from respondent based on identical circumstances to the present case. *See* IPSCO, Inc. v. United States, 965 F.2d 1056, 1060-61 (Fed. Cir. 1992) (IPSCO). Petitioner notes that in IPSCO, the costs for producing limited-service and regular-grade OCTG were the same, and therefore the constructed value of the two grades was the same. In rejecting respondent's argument, petitioner contends that the Federal Circuit determined that section 1677(e) does not allow adjustment of production costs to account for products of a lower grade or less value.[3] Petitioner notes that the Federal Circuit, therefore, upheld the Department's calculation methodology of comparing individual U.S. prices to constructed value. Petitioner maintains that the Department should reach the same result in this review.

Petitioner argues that Hylsa's proposed remedy for price differences between limited-service and regular-grade OCTG in the U.S. market, averaging U.S. prices, has only been employed by the Department in the case of perishable products such as flowers. In all other cases in which averaging U.S. prices has been suggested, the Department has rejected this argument. Additionally, petitioner argues that the Federal Circuit also rejected this argument in the Koyo case. *See* Koyo Seiko Co., Ltd. v. United States, 20 F.3d 1156, 1159 (Fed. Cir. 1994) (Koyo). In Koyo, the Court ruled that because tapered roller bearings are not perishable and subject to distress sales, Commerce properly followed its long-established practice of not averaging the U.S. price. Petitioner contends that Hylsa's assertion that sales of limited-service pipe are analogous to end of day distress sales of perishable products, such as flowers, are not applicable in the present case. Petitioner contends that distress sales of perishable products are made under conditions where the product is about to spoil or die and, therefore, become un-salable and need to be sold at low prices. Petitioner maintains that Hylsa has made no showing to that this logic is true of OCTG.

In its June 14, 2005, rebuttal submission, Domestic Interested Parties argue that the perishable-products practice does not apply to steel products. *See* Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Canada, 58 FR 37099 (July 9, 1993) (Canadian Steel). Domestic Interested Parties contend that Hylsa has not demonstrated that circumstances exist with respect to the sale of OCTG pipe to warrant a departure from the Department's stated preference of comparing specific U.S. sales to comparison market weighted-average values.

[3] Petitioner notes that Hylsa has acknowledged that regular-grade and limited-service OCTG share the same costs, with the only difference being that limited-service OCTG cannot be used in all OCTG applications and is generally sold at a lower price.

Department's Position: We disagree with Hylsa and have not adjusted the margin program to account for supposed pricing differences between limited-service and regular-grade OCTG.

The Department does not consider OCTG to be a perishable product and the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has declined to consider steel a perishable product in previous decisions. *See* IPSCO and Koyo. Hylsa admits that pipe is not a perishable product, and instead argues that sales of limited-service OCTG are a necessary consequence of attempting to produce regular-grade OCTG, and therefore analogous to end of day distress sales of perishable products. *See* page 8 of Hylsa's June 9, 2005 Case Brief. The Department rejects Hylsa's argument. The premise of "end-of-day" distress sales is that the product in question loses value between the beginning and the end of the day. Because limited-service OCTG and regular-grade OCTG do not have a same-day (or some comparable time frame) loss of value, the Department cannot draw an analogy between these two products.

We disagree with Hylsa that the production of limited service OCTG is an "unavoidable consequence" of producing regular grade OCTG. The term "unavoidable consequence" is used in accounting to describe the production of two or more joint products at the same time from a common production process. Cost Accounting, A Managerial Emphasis, Charles T. Horngren, 7th ed., 1990, chapter 16, page 537. That is, the production of one of the joint products unavoidably results in the simultaneous production of the others (*e.g.*, the curds and whey from processing milk). In the case of limited service OCTG, errors are made as individual pipes are formed on a production line. However, because producing OCTG pipes does not result in the production of other ancillary product(s), all costs associated with producing OCTG pipe can be directly tied to the individual pipe. Thus, the activities and associated costs for each run can be directly identified with that product and its cost is known.

While limited service products may or may not be produced intentionally, we note that the resulting product is still a viable OCTG pipe that can be used in OCTG applications. Furthermore, the accounting treatment in Hylsa's books and records does not support the notion that limited service pipe and regular grade OCTG product are some type of joint products that warrant special treatment. Hylsa admits that in its normal system limited service OCTG and regular grade OCTG products are assigned the same costs, if they pass through the same production cost centers. For these reasons, we disagree with Hylsa's proposal that the limited service OCTG and regular grade OCTG should be combined as if one aggregate sale had taken place.

For the foregoing reasons we will not average U.S. sales prices, but will continue to use individual U.S. sales in our dumping margin calculation.

Comment 4 – Offsetting for Export Sales that Exceed Normal Value

Hylsa argues that the Department failed to take into account so-called "negative margins" (*i.e.*, export transactions that exceed normal value) calculated in the Preliminary Results and instead set "negative margins" to zero (*i.e.*, a practice referred to as "zeroing"). Hylsa maintains that had the Department not zeroed "negative margins," the preliminary results would have been *de minimis* for Hylsa.

Hylsa argues that treating "negative margins" as zero margins, while consistent with the Department's normal practice, is inconsistent with U.S. obligations under the World Trade Organizations (WTO) Antidumping Agreement, specifically the WTO appellate body and cites to United States – Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R, AB-2004-2 (August 11, 2004) (Softwood Lumber). Respondent maintains that the Department's zeroing methodology will ultimately be overturned. Therefore, Hylsa contends that in order to avoid unnecessary burdens, the Department should change its practice of zeroing "negative margins" for the final results and consider both positive and "negative margins" in its dumping calculations.

Hylsa further argues that if the Department continues its zeroing practice for the final results, respondent, along with the United States and Mexican governments, will be forced to go through unnecessary and time-consuming legal proceedings.

In its June 17, 2005, rebuttal submission, petitioner argues that the Department should continue to use its zeroing methodology. Petitioner contends that the Department's use of the zeroing methodology pursuant to the statute is a reasonable interpretation of 19 U.S.C. § 1677(35)(A) and its use of the terms "dumping margin" and "weighted average dumping margin." Petitioner maintains that the Federal Circuit has ruled that in both antidumping investigations and administrative reviews, the Department's use of zeroing is completely in accordance with the statute and must be upheld. *See* Corus Staal v. United States Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (Corus Staal II).

Petitioner argues that in Corus Staal II, the Federal Circuit concluded that WTO settlement decisions (*i.e.*, WTO Appellate Body) have no binding effect under U.S. law and are owed no deference. *See* Corus Staal II at 1348-49.

Petitioner argues that while the WTO Appellate Body found zeroing to be invalid in Softwood Lumber, it was only invalid as it related to that particular case. *See* Softwood Lumber at paras. 19,63. Additionally, petitioner contends that the Department's use of zeroing was upheld by the Federal Circuit in the Corus Staal case, in which the Federal Circuit relied on the Department's implementation of the decision in Softwood Lumber. *See* Corus Staal BV v. United States, 259 F. Supp 2d 1253 (CIT 2003) (Corus Staal).

Petitioner argues that U.S. law provides that adverse WTO dispute settlement decisions are not only not binding, but may not be implemented by the Department through a change in its practice absent specific instructions from the United States Trade

Representative after consultation with Congress. *See* 19 U.S.C. § 3538 (2000); SAA at 1032, reprinted in 1994 U.S.C.C.A.N. at 4318.

In its June 14, 2005, rebuttal submission, Domestic Interested Parties argue that Department's practice of zeroing "negative margins" in antidumping reviews is consistent with recent decisions by the Court of International Trade (CIT). *See* Corus Staal; PAM S.p.A. v. United States, 265 F. Supp 2d 1362 (CIT 2003) (PAM). Domestic Interested Parties contend that the Federal Circuit Court affirmed the CIT's decision in Corus Staal and denied a request for a rehearing in Corus Staal II. Domestic Interested Parties contends that in the PAM decision, the CIT determined that reports issued by the Appellate Body under the WTO Dispute Settlement Understanding have no binding effect under the law of the United States. *See* PAM, 265 F. Supp 2d at 1372.

Domestic Interested Parties maintain that the court in PAM held that the WTO Antidumping Agreement does not explicitly prohibit zeroing. *See* PAM, 265 F. Supp 2d at 1373. Domestic Interested Parties also contend that the "negative margins" are zeroed by the Department to prevent a foreign producer from masking its dumping with more profitable sales. *See* PAM 265 F. Supp 2d at 1371. Domestic Interested Parties argue that the Department's practice of only including dumped sales in the aggregate while including all sales to determine the margin is not an unreasonable interpretation of the statute. *See* PAM, 265 F. Supp 2d at 1371.

Department's Position: We disagree with Hylsa and have not changed our calculation of the weighted-average dumping margin for the final results. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. *See, e.g.*, Notice of Final Results of Antidumping Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 69 FR 75921 (December 20, 2004) and accompanying Issues and Decision Memorandum at Comment 4; Final Results of Administrative Antidumping Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand 69 FR 61649 (October 20, 2004) and accompanying Issues and Decision Memorandum at Comment 7; and Notice of Final Results of Antidumping Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada 69 FR 68309 (November 24, 2004) and accompanying Issues and Decision Memorandum at Comment 8.

The Federal Circuit has affirmed the Department's methodology as a reasonable interpretation of the statute. *See* Timken v. United States, 354 F.3d 1334, 1342-43 (Fed. Cir. 2004) (covering an antidumping administrative review of tapered roller bearings from Japan). More recently, the CAFC again affirmed the Department's methodology as consistent with the statute with respect to an antidumping investigation in Corus Staal II. The Court in Corus Staal II held that the Department's interpretation of section 771(35) of the Act to permit this methodology was permissible whether it be in the context of an administrative review or investigation. *See* Id. at 7.

With regard to Hylsa's argument concerning the WTO Appellate Body report in Softwood Lumber, at the instruction of United States Trade Representative, the

Department implemented the WTO report on May 2, 2005, pursuant to section 129 of the URAA. Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada, 70 FR 22636 (May 2, 2005). Under section 129, the implementation of the WTO report affects only the specific administrative determination that was the subject of the dispute before the WTO: the antidumping duty investigation of softwood lumber from Canada. *See* 19 U.S.C. 3538. The implementation of Softwood Lumber has no bearing on this or any other antidumping duty proceeding. *See* Corus Staal v. United States, Ct. No. 04-00316, Slip Op. 05-85 (July 19, 2005). Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final dumping margins in the Federal Register.

AGREE _______ DISAGREE _______

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date